IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2386 OF 1990

Vasant Lalchand Shah,
residing at Prashant, Dawood Baug,
J.P.Road, Andheri (West),
Bombay 400 058. .. Petitioner

v/s.

1. National Textile Corporation
(South Maharashtra) Limited,
a Corporation wholly owned by
Govt.of India, having its
Registered Officer at N.T.C.House,
15 Narottam Morarjee Marg,
Ballard Estate, Bombay 400 038.

2. V. Sundaram,
Working as Chairman-cum-Managaing
Director, of National Textile
Corporation (South Maharashtra)
Ltd., 15, Narottam Morarjee Marg,
Ballard Estate, N.T.C. House,
Bombay 400 038.

3. National Textile Corpn
(Maharashtra North) Ltd.,
NTC House, Narottam Morarjee
Marg, Ballard Estate,
Mumbai 400 038. .. Respondents

Mr.G.K.Masand with Mrs. S.R.Sawant for the petitioner.

Ms.Nandini Menon for the respondent Nos.2 and 3.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 30th June, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

The order dated 5th July, 1990 came as a bolt from blue to the petitioner. He was informed by the

respondent No.1 that he is being prematurely retired under the Premature Retirement Scheme with effect from close of Saturday, 7th July, 1990.

2. The petitioner challenges this order by means of this writ petition.

3. The facts are in narrow compass and may be summarised thus-

(i) The petitioner joined National Textile Corporation (for short, 'the Corporation') in the month of December, 1978 as Weaving Master.

(ii) Prior thereto, the petitioner had worked for more than two decades in different mills.

(iii) In the month of July, 1982, for the promotion to the post of Production Manager, the Selection Board selected, the petitioner. He was posted at Mumbai Textile Mills, (a Unit of National Textile Corporation).

(iv) The petitioner worked in Mumbai Textile Mills until May, 1988.

(v) The petitioner was transferred as Production

Manager to Podar Mills (another unit of National Textile Corporation) by the order dated 26th May, 1988 on the same terms and conditions and continued to work as such until the date of premature retirement.

4. It appears that in the meeting No.109 held on 13.6.1988, the Board of Directors considered the amendment in the Corporation's Recruitment and Promotion Rules including the provision regarding premature retirement before the prescribed age of superannuation. The Premature Retirement Scheme framed by the Corporation pursuant to the meeting No.109 of the Board of Directors held on 13th June, 1988, was not shown to us. The learned counsel for the Corporation submitted that in its meeting held on 13.6.1988, the Board of Directors approved the agenda note which is available on record at pages 47-52 (Exhibit N-2).

5. As per the agenda note aforereferred, Rule 11.03(b) was proposed to be added that provided that notwithstanding anything contained in Rule 11.03(a), the competent authority may retire any employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice in the Corporation's interest.

6. Now we may reproduce the communication dated 5th July, 1990 whereby the petitioner was informed that the Corporation had decided to retire him under the Premature Retirement Scheme. That reads thus-

"NATIONAL TEXTILE CORPORATION
(SOUTH MAHARASHTRA) LIMITED
(Subsidiary of NTC- a Government of India Undertaking)

CONFIDENTIAL

NTC (SM)PERS/1252/90. 5th July, 1990

Shri V.L.Shah,
Production Manager,
Podar Mills (UC),
BOMBAY.

Dear Sir,

Your date of birth as recorded in the service Record is 29th June, 1935. You have crossed the age of 55 years as of date. You would have ordinarily superannuated on attaining the age of 58 years in June, 1993.

Pursuant to the Board Resolution No.109.23 introduced in its Meeting No.109 held on 13th June, 1988 and on the basis of your service record, it has been decided to retire you under the Premature Retirement Scheme of the Corporation with effect from close of Saturday, 7th July, 1990. You will be entitled to the following:-

1) The payment of three months' salary excluding HRA & CCA in lieu of three months' notice period.

2) The payment of leave salary for quantum in days of earned leave to your credit upto 7th July, 1990.

3) The encashment of L.T.C. facility, if not availed for the 1989-90 as per

rules in force.

4) The payment of gratuity for every completed year of service or part thereof if admissible under the Gratuity Rules applicable to you.

5) The Provident Fund benefits as admissible under the scheme in which covered.

6) The transfer benefits for yourself and your family for proceeding to your home town or to the place where you intend to settle in India, as admissible under T.A. Rule No.9 in the nature of reimbursement of expenses on your submitting proof of such expenditure.

By a copy of this letter, the Mill authorities are being advised to settle your account as above.

Thanking you,

Yours faithfully,
For N.T.C. (S.M.) LIMITED.,
Sd/

(V. SUNDARAM)
CHAIRMAN-CUM-MANAGING DIRECTOR"

7. The learned counsel for the petitioner strenuously urged that power of premature retirement has been grossly misused by the respondents as none of the grounds on which the officer could be prematurely retired existed in the case of the petitioner. The learned counsel would submit that the action to premature retire the petitioner was arbitrary and malafide. Relying on the agenda note that was placed before the Board of

Directors in its meeting No.109 dated 13.6.1988, the learned counsel submitted that notice of three months in writing or three months pay and allowances in lieu of the said notice was not given. The communication of premature retirement only speaks about the entitlement of various payments excluding HRA and CCA and when actual payment was made under the cover of letter dated 10th July, 1990, only three months basic pay was given to the petitioner. Thus, the learned counsel contended that there has been violation of the relevant rule. The learned counsel also highlighted that there was not material adverse to the petitioner on the basis of which it can be said that the petitioner has lost effectiveness and utility and become a deadwood. The learned counsel in support of the petitioner's case relied upon the judgment of the Supreme Court in the case of R.P. Malhotra v. Chief Commissioner of Income Tax, Patiala and others, 1991 SCC (L&S) 993. He also relied upon the judgment of the Supreme Court in the case of Sukhdeo v. Commissioner Amravati Division, Amravati and another, 1996 SCC (L&S) 1141, Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another, 1993 SCC (L&S) 521 and Madan Mohan Choudhary v. The State of Bihar and others, 1999(1) Supreme

Today 448.

8. In opposition to the case of the petitioner, on behalf of the respondents, two affidavits came to be filed. The first affidavit was filed on 7.9.1990 by M.N. Acharya, General Manager. The said affidavit shows that in the first week of June, 1990, the Chairman-cum-Managing Director, National Textile Corporation (South Maharashtra) Limited called for the available service record of the petitioner. He also called K.K.Khanna, General Manager of Podar Mills and M.C.Datta Gupta, General Manager of Jupiter Textile Mills. The Chairman went through the available service record of the petitioner and after having discussion with K.K.Khanna and M.C.Datta Gupta, formed his opinion to prematurely retire the petitioner. The Chairman asked M.N. Acharya to prepare a letter of premature retirement in the format on the lines adopted by the Steel Authority of India Limited and put up the same for his approval and signature. M.N.Acharya prepared a letter of premature retirement and put up the same before the Chairman for his signature in the first week of July, 1990. The Chairman approved the same and signed the letter of premature retirement on 5th July, 1990.

9. The other affidavit is of one H.P. Singh dated 10th March, 2005. The said affidavit seems to have been filed pursuant to the order dated 13th January, 2005. It is stated in this affidavit that by the Textile Undertakings (Nationalisation Ordinance, 1995 (later on replaced by an Act of the same name), 13 cotton textile undertakings were taken over. By office order dated 25.3.1996, the charge of the cotton textile undertakings of Podar Mills alongwith those of certain other mills was transferred from the respondent No.1 to respondent No.3. On such transfer, all the papers and documents pertaining to the employees of Podar Mills, their confidential reports, personnel files were transferred to respondent No.3. The respondent No.3 received only one personnel file of the petitioner from the respondent No.3 containing the documents (being part of separate compilation). The papers received were incomplete and despite diligent search, no further material concerning the petitioner's service record was available. It is stated by him that from the perusal of the appraisal report of the petitioner, it was apparent that he had never good appraisal report at any time. The superiors had always found him below average in their assessment of his performance and the petitioner was given a luke warm rating in the

performance appraisal dated 15.7.1986 by the Chief Executive Officer of Mumbai Textile Mills where he was then working. He was given a negative appraisal in the performance report dated 18.7.1987 by Shri Karkhanis, the General Manager of Mumbai Textile Mills. He was also given a negative appraisal by M.C.Datta Gupta vide appraisal dated 22.2.1988. This is how by means of the affidavit of H.P.Singh, the petitioner's premature retirement is sought to be justified.

10. During the course of hearing, the learned counsel for the respondents could not show anything other than the compilation annexed with the affidavit of H.P.Singh.

11. The principal question that arises for our determination is whether there was any material before the competent authority (Chairman-cum-Managing Director) on the basis of which he could have been satisfied that the petitioner has lost effectiveness and utility and become a deadwood and that the petitioner's premature retirement was in the interest of the Corporation.

12. The material that has been relied upon by the

respondents comprise of three performance appraisal reports. We shall advert to that one by one.

13. The first performance appraisal report pertains to the period from 1.7.1986 to 30.6.1987. The reporting officer in his report dated 18.7.1987 recorded thus-

> "He is sincere, honest and hard working. However, he has limited abilities for effectively co-ordinating the Production Planning, Quality Control and Production activities. He is not able to command respect from his subordinates to the extent required for the post of Production Manager in Bombay Mills. Perhaps he may be found suitable for upcountry mills."

The reviewing officer put his note thus-

> "While agreeing to the reporting officer's view regarding Shri V.L.Shah's performance, I feel transferring him to u/c mills will not solve the problem. Shri Shah should be given counselling for his shortfalls. He is otherwise sincere & hardworking."

14. The second performance appraisal report relates to the period from 1.6.1988 to 31.12.1988. The reporting officer in his report observed thus-

> "1) He is obedient.
>
> 2) Needs lot of pushing and Forgetful about priorities.
>
> 3) Lacks initiative and needs to be

guided.

4) Cannot keep things to himself and leaves out management secrets easily.

5) He could not command respect of the subordinate staff during last few months (6 months) he is here. Talks irrelevant & tends to confuse others. Lacks in leadership.

6) He needs to be guided a lot, which is a waste of energy at all levels.

7) Overall, he is not fit for Mill Management job & should be transferred to activities available to his age, qualifications & ability."

This report is dated 22.2.1988. Pertinently, this report does not have remarks of the reviewing officer.

15. The third performance appraisal report is dated 1.1.1990. The report of the reporting officer reads thus-

"(1) Below Average performance in his main jobs i.e. Production, Planning, Maintenance, Labour control and other technical matters.

(2) Lacks initiative and does not plans or guides his subordinates for job/work improvements.

(3) The performance improvements as claimed by the officer in part 2 are correct but his contribution is negligible.

(4) He is obedient and honest."

This report also does not contain the remarks of the reviewing officer. However, the remarks of the Chairman-cum-Managing Director reads, "I agree performance is below average."

16. The three performance appraisal reports that we have referred to above neither collectively nor individually make out that the petitioner has lost his effectiveness and utility or has become a deadwood. The first performance appraisal report, as we have already indicated above, pertains to the period 1.7.1986 to 30.6.1987. In the opinion of the reporting officer, the petitioner is sincere, honest and hard working. His ability was found limited and it was observed that he was not able to command respect from his subordinates. By way of piece of advice, it is recorded that he may be found suitable for upcountry mills. The reviewing officer, however, was of the view that the petitioner should be given counselling for the shortfalls. It was recorded that he was otherwise sincere and hard working. There is no report available for the period from 1.7.1987 to 31.5.1988. The other report that has been relied upon by the respondents is for the period from 1.6.1988 to 31.12.1988. This report suffers from

two flaws. The first that it does not have remarks of the reviewing officer. The other the inconsistency in the dates apparent from the report. The petitioner appears to have written down his performance on 21.12.1989 while the date recorded by the reporting officer is 22.2.1988. There is something wrong somewhere. The petitioner may have wrongly put the date as 21.12.1989 or the reporting officer may have put the date 22.2.1988 wrongly. Or both of them put the dates incorrectly. Be that as it may, for want of any remarks from the reviewing officer, the efficacy of this performance appraisal report for the period from 1.6.1988 to 31.12.1988 is clearly lost. There are no remarks by the Chairman-cum-Managing Director in this report. Even otherwise, the report of the reporting officer records, he should be transferred to activities suitable to his age, qualifications and ability. That would surely suggest that in the opinion of the reporting officer, the petitioner has not lost effectiveness and utility. The only other report now that remains is the report dated 1.1.1990. It is true that in this report, the reporting officer has recorded that the performance of the petitioner was below average and that he lacked initiative and does not guide his subordinates for job/work

improvement but the report appears to be contradictory. It is recorded in the report that the performance improvements as claimed by the officer (the petitioner) in part 2 are correct.

Part 2 records the performance improvements thus-

> "i) Labour: Abolished 42 posts from April 89 to Oct.89 after signing the agreement with the representative union and reduction in employment of 13 post in folding dept. by way of increasing the workload of cut lookers.
>
> ii) Conservation of energy: After implementing the conservation of energy programmes in the mills, we have achieved electricity and fuel saving and we are below the norms set by the N.T.C. holding company.
>
> iii) Safety: By educating and propagating about safety methods in working atmosphere, the reportable accidents rate and manhour lost due to injury has gone down.
>
> iv)a) Cost: The cost of size mixing is maintained compared to last year by judicious mixing of size ingredients eventhough the prices of size ingredients are gone up. Also stores and spares consumption is controlled and maintained adequately.
>
> b) Due to change in drawing pattern of the warp selvedge I could reduce 32 ends in 30s and PC Blends fabrics in every meter of cloth produced without affecting the quality of the fabric.
>
> v) 53% of the weaving production is packed for export from April 1989 to Nov. 89. Also we have exported 15000 kg. of cotton yarn also during this period."

17. How could on the basis of such performance

achievements during the period of review, the petitioner could have been recorded as below average or that petitioner's contribution was negligible and that he lacked initiative and did not guide his subordinates for job/work improvements. The silent features of the petitioner's job are:

i) Overall in charge of Production planning, general administration and labour discipline in the mill.

ii) To negotiate with representative union for all labour problems.

iii) To furnish necessary datas to the Divisional Office.

iv) To keep strict vigil for production and quality of the material so that yarn realisation, value loss of cloth and hard waste are controlled properly.

v) Strict check on wastage and proper use of electrical & fuel energy.

vi) Proper house keeping of the mills.

vii) Adequate check on stores intendenting, receiving and delivering to the departments.

viii) Proper co-ordination between production and Sales dept. to achieve maximum turnover.

The petitioner has been successful on various fronts including export, labour, cost and conservation of energy. Despite these performance achievements if the petitioner was recorded the

below average, that casts serious doubts about the correctness of the remark ‘below average’.

18. That the three performance appraisal reports were not treated as adverse reports by the Corporation would be clear from the fact that these reports were never communicated to the petitioner.

19. The amended Recruitment and Promotion Rules provided for premature retirement by the competent authority. The criteria for judging the inefficiency under these Rules is that an employee has been rated less than "good" or less than "satisfactory" for three years consecutively. Nothing has been shown that the petitioner’s confidential reports were less than "good" or less than "satisfactory" for three years consecutively. The statement made by H.P.Singh in his affidavit that from the perusal of the appraisal reports of the petitioner, it was apparent that he never had a good appraisal report at any point of time is not a truthful statement on oath. The entire service record of the petitioner is not even available. This is what we have been told at least. How could H.P.Singh say that the petitioner’s superior has always found him below average of his performance. It is only in the one report recorded by K.K.Khanna

on 1.1.1990, it is recorded that the petitioner's performance was below average. The evaluation period is not disclosed from that report. We have already indicated that the report is self-contradictory as he agrees with the improvement in the performance of the company as stated by the petitioner in his part 2 report.

20. It is true that an opinion of the authority regarding compulsory retirement is a subjective satisfaction. However, that satisfaction has to be formed on the basis of the entire record of service. In the case of Baikuntha Nath Das, the Supreme Court culled out the following principles with regard to the compulsory retirement (though with reference to FR56(j)) thus-

> "(i) An order of compulsory retirement is not a punishment. It is implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
>
> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate

court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary- in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

21. Keeping the limited scope of interference in mind, we find that on the basis of the three performance appraisal reports, no reasonable man would form the opinion that the petitioner has lost his effectiveness and utility or that his premature retirement was in the public interest. The petitioner has been found to be honest and hard working all along. As a Production Manager he has

been able to achieve improvements. It is very difficult to countenance the view that contribution of the petitioner in the improvements was negligent when he was overall incharge of Production, Planning, Maintenance, General Administration and Labour in the mill.

22. We may notice here that in the letter dated 2nd August, 1988, the General Manager appreciated the petitioner's work by observing that the petitioner has settled well in the team of Podar Mills and grasped his responsibility quite well. Not only that, keeping in view the petitioner's involvement and dedication to the job, the petitioner was requested to concentrate in reducing the operational and other losses. That he was successful in achieving that is apparent from the appraisal reports. That the same person communicated to the Director (Personnel) after few months that the petitioner was not fit for the work in Podar Mills smacks of something extraneous.

23. We are of the considered view that on the basis of available evidence no satisfaction could have been arrived at by the competent authority that the petitioner has lost his effectiveness and utility and that it was in the public interest to

compulsorily retire him. The order of compulsory retirement suffers from arbitrariness and, therefore, has to be set aside.

24. In what we have stated above, we set aside the order dated 5th July, 1990 (Exhibit 'G'). Since the petitioner would have ordinarily superannuated on attaining the age of 58 years in the month of June, 1993, the question of reinstatement of the petitioner does not arise. The petitioner shall be entitled to all monetary benefits as if he superannuated on attaining the age of 58 years. We record the statement of the learned counsel for the respondents that within a period of eight weeks, the petitioner shall be paid his monetary dues as per this order. No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)